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HEARINGS

Before The

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

A BILL TO AMEND THE CLEAN AIR ACT
AND FOR OTHER PURPOSES

EXECUTIVE SESSION

Washington, D. C.

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Thursday, August 27, 1970

United States Senate,
Committee on Public Works,
Washington, D. C.

The committee met, pursuant to call, at 10:15 a.m. in
room 4200, New Senate Office Building, Senator Jennings Randolph
(chairman of the committee) presiding.

Present: Senators Randolph, Muskie, Jordan, Young, Bayh,
Eagleton, Cooper, Boggs, Baker, and Gurney.

Staff Members Present: Richard B. Royce, M. Barry Meyer,
Bailey Guard, Leon G. Billings, Richard D. Grundy, Harold H.
Brayman, Thomas C. Jorling, James Jordan, Allen Jones, Robert
Maynard, and Adrien Waller.

The Chairman. Good-morning, gentlemen.

We have before us in the full Committee today a Committee
Print No. 1, and this print, which you presumably have had the
opportunity to scan or study since Tuesday, seems it will be a
proper print for the consideration of the full Committee in con-
nection with the prior work of the subcommittee to amend the

1 Clean Air Act.

2 I would wish to defer at this point to the Chairman of the
3 Subcommittee, Senator Muskie, and Ed, you might perhaps outline
4 what your thinking is as to the procedure or the manner in which
5 we might consider one or more parts of the proposed legislation
6 today.

7 I am not concerned, and I am sure none of us are, with a
8 hard and fast procedural program within the full committee, but
9 I would want you to express your thinking, knowledgeable as you
10 are, in reference to what we might do in beginning our discus-
11 sions. And I would want other Members, if they desired, also,
12 perhaps to comment at this point.

13 Ed, if you will do that?

14 Senator Muskie. All right. First, Mr. Chairman, a point
15 of personal privilege. I am expecting a call from Senator Smith
16 of Maine sometime between now and 12 -- her office is two floors
17 down -- to discuss something that she wants to discuss with me,
18 and so I would like to be in a position to respond to her call
19 when it comes, and if and when it does, I would think Leon could
20 continue to take the committee through the bill.

21 Secondly, I gather that there will be a vote on the Floor
22 about 11 o'clock, on the Nelson-Goodell Amendment. I would hope
23 that the committee might expedite that process and get back as
24 soon as possible.

25 The Chairman. Well, I think both of the problems, your

1 personal request and the expeditious voting by Members on that
2 Amendment, and return to work here, are both appropriate, and I
3 am sure we can handle them.

4 Senator Muskie. Now with respect to substance, I would
5 recommend that we postpone until the last item the consideration
6 of the problem of automotive emissions. That seems to be the
7 most controversial and difficult subject flowing out of the
8 reaction to the subcommittee bill, and so I think it would be
9 more expeditious to dispose of everything else, since the other
10 provisions seem to be less controversial, and get them cleaned
11 up and out of the way, so that we can focus, with minimum pres-
12 sure, on the remaining problems of the automobile emissions, if
13 that would meet with the approval of the committee.

14 The Chairman. Well, I think that is a practical approach,
15 and would you care, Senator Boggs, to make comment, or Senator
16 Jordan, Senator Baker?

17 I would like for all of you, if you care to at this point,
18 or we just begin to work our will.

19 Senator Boggs. Well, I thank you, Mr. Chairman. I like
20 the idea of postponing until the end the toughest item in the
21 bill. I think that is good, and we could no doubt well spend
22 some time on it, if we can get through the rest of the bill,
23 it seems to me, maybe, and without too much difficulty, and
24 then have the whole thing in perspective a little better.

25 Senator Muskie. Now then on the remainder, I would suggest

1 that first we take up the items in the bill toward the end of
2 the bill, which we really sort of reported up to the full com-
3 mittee: the noise pollution, the fuel additive provision, and
4 used vehicles.

5 Let me list these items for you, so that we will have them
6 before us on an agenda. First is noise pollution; second, and
7 this would be the order we will discuss them, second will be the
8 fuel registration; third will be the court extension.

9 Senator Jordan. Court?

10 Senator Muskie. Court extension. C-o-u-r-t.

11 Fourth will be the used vehicle control provision.

12 All right. Now the noise pollution provision is on page 83
13 of the bill, pages 83 and 84, and what this calls for is a com-
14 plete investigation and study of noise and its effect on health
15 and welfare, in order to determine or to make findings in seven
16 areas of research and study which are listed on page 83.

17 The bill provides an authorization of \$30 million for those
18 purposes. It also provides for establishing within the Depart-
19 ment of HEW an Office of Noise Abatement and Control. This is
20 all there is in the noise provisions of the bill.

21 Senator Jordan. May I ask a question at that point?

22 Senator Muskie. Yes.

23 Senator Jordan. I thought you already had one. They
24 started issuing regulations about a year ago, which nobody could
25 meet, and they backed up some. Who did that?

1 Mr. Royce. Senator Jordan, I believe this would be under
2 the Office of Occupational Health, HEW, and issues noise ordi-
3 nances on factory in-house noise.

4 Senator Jordan. Well, that is where we had our squabble
5 before.

6 Mr. Royce. Yes.

7 Senator Jordan. And is this a new agency?

8 Senator Muskie. This is in the same Department.

9 Mr. Royce. It would be, and the existing one, this would
10 be part of EPA, Environmental Protection Agency, when it is
11 established. But there will be -- determination of noise level
12 for workers will be under a different office than the determin-
13 ation of noise level for the ambient, the world around us.

14 Senator Jordan. Leery of it, but go ahead.

15 Senator Muskie. Any question about it?

16 Senator Baker. There is nothing in this one, Everett, --if
17 you can pardon me for saying "nothing" when I am speaking of
18 \$30 million -- but nothing except an investigation of these
19 specific items is really what it amounts to.

20 Senator Jordan. Well, what do they need the \$30 million
21 for? How long would that last? Thirty years?

22 Senator Muskie. It is open-end. "Not to exceed." It is a
23 lower ceiling than if you had no ceiling.

24 Senator Jordan. They can spend \$30 million. I know how
25 they can spend it.

1 Senator Muskie. It doesn't say it authorizes. It is
2 "not to exceed", Everett, and if you didn't have any ceiling,
3 you could theoretically appropriate a hundred million dollars.
4 So this is a ceiling.

5 Senator Jordan. All right.

6 Senator Muskie. If there are no questions about that item,
7 let's turn to the fuel registration provision on page 67. Fuel
8 registration and regulation provision begins on page 67, and
9 continues through page 72.

10 Senator Boggs. Mr. Chairman?

11 Senator Muskie. Yes, Caleb.

12 Senator Boggs. The acoustics in this room aren't good, for
13 some reason or other, and you know, on this side, it is ---

14 Senator Muskie. You can't hear? All right, we keep remind-
15 ing ourselves of that, and then forgetting it.

16 Senator Boggs. Right.

17 Senator Muskie. Now the technique here is that the Secre-
18 tary is given authority to require the registration of fuels
19 and fuel additives. And this is covered in Section 212(a) on
20 page 67.

21 Senator Jordan. Would this be the Secretary of Transporta-
22 tion you are speaking of here, at this particular place?

23 Senator Baker. No.

24 Senator Muskie. No, this is the Secretary of HEW.

25 Senator Jordan. It looks to me that you are getting your

1 fuels under the wrong spot.

2 Senator Muskie. Well, we are talking here about the health
3 impact of fuels and fuel additives. And the health responsi-
4 bilities of the Government are under the Secretary of HEW, and
5 so is the air pollution program.

6 Senator Boggs. And under the reorganization, this would be
7 under the new Administrator of the Environmental Protection
8 Agency.

9 Senator Muskie. That is right.

10 Senator Boggs. Instead of the Secretary of HEW.

11 Senator Muskie. That is right, all of this will move over
12 to the new Environmental Protection Agency.

13 Senator Jordan. I hope that doesn't ever happen, because
14 they have gone plumb nuts on that one. That is right.

15 Senator Muskie. Now the teeth of this Section are found
16 in Subsection (b) on the bottom of page 67 and the top of
17 page 68: "The Secretary may, on the basis of information ob-
18 tained under the next subsection, ... prohibit the use of any
19 fuel which includes any components, including additives, in
20 amounts which may contribute to emissions which would endanger
21 the public health or welfare or impair the emission control
22 performance of any vehicle or vehicle engine which the Secretary
23 finds would otherwise conform to standards promulgated pursuant
24 to Section 202 of this Act."

25 And Subsection (b) (2) provides -- in the middle of page 68--

1 "Prior to establishing any prohibition on the use of any fuel
2 which includes components, including additives, in any amount
3 in any fuel for purposes other than protection of the public
4 health or welfare, the Secretary shall find, and publish such
5 finding, that such standards are necessary for the application
6 of the most effective program of emission control for new
7 vehicles or new vehicle engines or certified used vehicle devices
8 or that such standards are necessary to achieve the most economic
9 alternative emission control performance over the life of the
10 vehicle, engine or device."

11 and "(3) For the purpose of carrying out this section the
12 Secretary may prescribe regulations prohibiting the manufacture
13 for sale, the sale, the offering for sale, or the delivery of
14 any fuel in commerce."

15 Subsection (c) (1) is the subsection that authorizes the
16 Secretary to require the information necessary upon which to
17 base the setting of those standards, and that subsection, which
18 goes through pages 69 and 70, details the Secretary's authority,
19 the nature of the information he can require, and the authority
20 to get that information, if it isn't provided at his request.

21 Senator Jordan. May I ask another question?

22 In all of this, what provision -- I haven't studied this
23 bill at all -- are you providing for anybody that is affected
24 by this to appeal from any of these rulings that they might
25 come up with?

1 Senator Muskie. What page is that?

2 Mr. Royce. Judicial review?

3 Mr. Billings. Judicial review in Title I.

4 Mr. Jorling. It is in Title I, yes, but it is reference
5 to the Act, so that -- page 35 ---

6 Senator Muskie. Page 35, line 16.

7 Senator Jordan. You mean under this, you are going to
8 bring them all into the District of Columbia?

9 Mr. Royce. That is right, the reason for that being,
10 Senator Jordan, to provide uniformity of judicial procedure.
11 If it went into all the different appellate or district courts,
12 we would get different rulings.

13 This would provide a uniform procedure, uniform rulings, and
14 greater clarification of the Act than if they go into any
15 district court.

16 Senator Muskie. What you are talking about when you are
17 talking about fuels, specifically, you are talking about some-
18 thing that is national application, and not district application.
19 You are talking about fuels, you are talking about a commodity
20 in terms of its national market and national use.

21 It would seem to me to make sense to bring them into the
22 Circuit Court of Appeals here in the District.

23 Senator Gurney. What was the provision for appeal? I
24 didn't hear that.

25 Senator Muskie. It is on page 35, line 16.

1 Senator Baker. Mr. Chairman, I object to this section, and
2 I have discussed it in the previous meetings of the subcommittee.

3 The Chairman. Howard, would you now be specific on the
4 section?

5 Senator Baker. Yes, sir. I am speaking now of the section
6 entitled "Registration and Regulation of Fuel Additives", which
7 is Section 212 et seq., beginning at page 67.

8 The Chairman. Thank you, sir.

9 Senator Baker. In general terms, my objection, stated then
10 and reiterated now, is that I have no objection to the regis-
11 tration of fuel additives for the information of the Secretary,
12 so long as they are confidential and not disseminated to com-
13 petitors in the same field.

14 And No. 2, I have no objection to the prohibition of the
15 use of fuels which produce deleterious results as a result of
16 the combustion by-products. I do object to the Secretary being
17 able to prohibit the sale of a fuel because of its composition,
18 rather than because of the result of burning it.

19 I do not want to shift the burden of designing fuels away
20 from the industry and onto the Secretary, and I am afraid that
21 is what we do in this section.

22 I propose instead, Mr. Chairman, that Section 212 in its
23 entirety be revised, and I would like to reserve judgment until
24 a later meeting of the committee to produce exact language, but
25 for openers, I would suggest that Section 212(b)(1) be changed,

1 beginning on the second line of page 68, so that it reads:
2 "of any fuel which produces emissions which would endanger the
3 public health", etc., which strikes the words "which includes
4 any components, including additives", the purpose being simply
5 to put the basis for prohibition on the result of burning it,
6 rather than on the composition, but to leave the disclosure of
7 composition so that the Secretary knows what to look for.

8 There will have to be other and conforming changes in the
9 balance of that section, but trying to state the matter again,
10 my objection is to the authority of the Secretary to prohibit
11 the sale of a fuel because of its composition, and that his
12 authority to prohibit the sale of a fuel should be based instead
13 on the results of burning the fuel, that is, the emissions that
14 result from it.

15 I think the Secretary should still have the right to compel
16 disclosure of the composition of the fuel so he doesn't have to
17 go on a chemical hunting expedition to find out what he should
18 be looking for, but that his authority to prohibit sale should
19 not be based on what is disclosed to him, but rather on what he
20 finds from burning.

21 The Chairman. Dick, I will recognize you, if you want to
22 comment.

23 Senator Muskie. May I ask a question, Mr. Chairman?

24 The Chairman. Yes.

25 Senator Muskie. What is the substantive difference between

1 the two?

2 As I read the language, Howard, in that subsection, what
3 it does is prohibit the use of any fuel which may contribute to
4 emissions which would endanger the public health or welfare.

5 On the face of it, I have no objection to eliminating the
6 language "which includes any components, including additives",
7 because I think all that is, is descriptive language.

8 Senator Baker. That is a vestige of the original section,
9 Mr. Chairman, which did base it on fuel composition, and in
10 previous subcommittee meetings, Mr. Chairman, you will recall
11 that I urged that that be changed, based on the result rather
12 than composition.

13 I think that elimination, on line 2, page 68, of the words
14 "which include any components including additives" is necessary
15 to make it clear that the Secretary's authority to prohibit is
16 bottomed on the combustion by-products rather than on the
17 composition of the fuel.

18 Senator Muskie. Do you think that the inclusion of that
19 language gives him any authority that he wouldn't have if the
20 language is excluded?

21 Senator Baker. Yes, sir.

22 Senator Muskie. What?

23 Senator Baker. Based on the total reading of Section 212,
24 especially the first section, which is Section Sub-Paragraph (a),
25 it provides that the Secretary can prohibit the sale of fuel,

1 unless (A) such fuel or fuel additives have been registered in
2 accordance with (c) (1); and No. 2, "any such fuel is in conform-
3 ity with", which means obviously that the fuel itself, in its
4 manufacture, is in conformity with the regulations prescribed
5 by the Secretary, which means that the Secretary can tell you
6 what he wants to put in, before you can sell it.

7 Senator Muskie. Or he can tell you what you can't put in.

8 Senator Jordan. He has got no right to do that, either.

9 Senator Muskie. He hasn't now. The question is whether
10 he should. That's the question we are raising.

11 Senator Jordan. Not unless it does some harm.

12 Senator Muskie. That's what we are talking about. I am
13 not interested in eliminating harmless components.

14 Senator Baker. I don't think we have a big question, Ed.
15 I think that your objective and mine are the same; that is, to
16 prohibit the sale of fuels which have a deleterious effect on
17 the environment.

18 The only thing I want to do is to make sure that that
19 test is based on an analysis of the use of that fuel rather than
20 on some arbitrary judgment by the Secretary on what components
21 can go into the fuel before it is burned.

22 Senator Muskie. Well, it is not the intent, as I understand
23 it, and the staff can correct me, to give the Secretary author-
24 ity to say how fuel -- what the composition of fuel should be,
25 but I think to be realistic, the Secretary has got to be concerned

1 not only with the basic fuel but with additives.

2 Senator Baker. Oh, by all means.

3 Senator Muskie. And I think the language ought to indicate
4 that this authority can focus on additives which ought not to
5 be included, not those which ought to be added. That goes to
6 the composition of fuel. But if we know something like lead
7 or something even more deleterious is the component that is
8 contributing to the harm that the fuel creates, then it seems to
9 me the Secretary ought -- would be in a hard position, would be
10 forced to close his eyes to the fact that it is that component
11 which is creating the harm.

12 Senator Baker. No, I don't want that. All I want to do,
13 though, is to make it certain that the requirement for disclosure,
14 which the Secretary must have, if he is to intelligently seek
15 deleterious substances, does not imply that the Secretary can
16 require the addition or prohibit the inclusion of a particular
17 substance in the fuel, but rather that he can prohibit the sale
18 of the fuel if certain combustion products are detectable.

19 Now the practical effect of that would be that in the case
20 of lead, while he would not have the authority to prohibit the
21 use of lead, he would have the same practical authority, because
22 he would identify the combustion by-products of lead, and say,
23 "You can't have these combustion by-products in your fuel."

24 It would then fall to the industry to find out how to
25 prevent it.

1 Senator Muskie. Do you think he should have authority to
2 say this? "You can't sell that fuel, because the presence of
3 lead in it produces certain results."

4 Senator Baker. No. I think you ought to be able to say---

5 Senator Muskie. You mean, he can't identify the harmful
6 cause of the fuel?

7 Senator Baker. Well, Ed, the thing that -- well, let me
8 try to make this ---

9 Senator Muskie. How does he sell the basis for his regu-
10 lation, if he can't identify the component which is doing the
11 harm?

12 Senator Baker. He identifies the component that is doing
13 the harm, but the component that is doing the harm is not the
14 tetraethyl lead, it is the combustion by-product of burning
15 tetraethyl lead that causes the problem.

16 Senator Muskie. But you have that by-product because of
17 the presence of tetraethyl lead.

18 Senator Baker. That is right, but I want to prohibit the
19 emission of the by-product rather than inclusion of the chemical,
20 because what I am saying is that at some future date, the indus-
21 try may find ways to moderate or change the combustion by-products
22 of given chemicals, and I do not want to see the industry lose
23 that possibility of innovation.

24 Senator Muskie. Well, I don't, either, but I am sure I am
25 misunderstanding what you are saying. As I read this language

1 in Subsection (b) (1), what it focuses on is the emissions. It
2 doesn't say that the Secretary has authority to dictate the com-
3 position of fuels by saying, "Well, now, the only fuel I will
4 approve is a fuel that is made up in such and such a way."

5 He has no such authority under any language of this section --

6 Senator Baker. I think he does.

7 Senator Muskie. ---that I can see.

8 Senator Baker. I think he does, under Section 212(b).

9 Senator Muskie. What it does say is say to him that you
10 can prohibit the use of a fuel which produces harmful emissions,
11 and you can identify what you believe to be the cause of those
12 emissions. Heavens -- how else does he do it?

13 Senator Baker. That is precisely how he does it. But if
14 we do it as you just put it, then you and I have no quarrel at
15 all.

16 Senator Muskie. I think that is what the language says.

17 Senator Baker. No, I don't, and of course, if we are down
18 to that point, then the staff can reconcile our differences,,
19 but I think that Subsection (b) of Section 212 gives the Secre-
20 tary authority to prohibit the sale of fuel because of the
21 inclusion of certain chemical components, rather than because
22 of the combustion by-products which are emitted.

23 Senator Muskie. As I said earlier, the language you are
24 talking about doesn't bother me, as long as it is clearly under-
25 stood, and there is no befogging language that throws any doubt

1 on this, it is clearly understood that the Secretary has author-
2 ity to identify the components in the fuel which are creating
3 the harm; because otherwise, I don't think that he can ever lay
4 the basis for his regulation.

5 Senator Baker. I agree. Now if I can restate my basic
6 premise, just so that we can thoroughly understand each other's
7 position, it is my contention that the Secretary ought to have
8 the authority to prohibit the sale of fuel which would contribute
9 combustion by-products which are deleterious to health; that the
10 Secretary should have the authority to require the disclosure of
11 the chemical composition of fuel, so that he doesn't go on
12 a chemical fishing expedition, but knows what to look for, but
13 that he must hold those disclosures in confidence, and that,
14 No. 3, he may then prohibit the sale of gas or fuel, based on
15 the combustion products, and not on the composition, thus leav-
16 ing the opportunity for innovation with the industry, but leaving
17 complete control over the emission of combustion by-products
18 to the Secretary.

19 Senator Muskie. Let me pinpoint this again. In my judg-
20 ment, he needs clear authority to identify those components which
21 in his judgment are harmful, and if he can't so identify those
22 components, then I don't think we have got an effective law.

23 Senator Baker. I am sorry. I didn't hear you.

24 Senator Muskie. I said, I think it ought to be clear that
25 he has authority to identify the harmful components.

1 Senator Baker. Well, I think that was included.

2 Senator Muskie. Or the components which generate the harm.

3 Senator Baker. I think that was included in my statement
4 when I said that the Secretary should have the authority to
5 require full disclosure of the chemical composition of his fuel.

6 Senator Muskie. The disclosure of the components is the
7 first step in his identifying those which in his judgment pro-
8 duce the harm.

9 Senator Baker. That is right.

10 Senator Muskie. So I think if you do the first, you have
11 got to give him the authority to do the second.

12 Senator Baker. And what is the second?

13 Senator Muskie. To identify the components that produce
14 the harm.

15 Senator Baker. Well, that is the reason for disclosure.

16 Senator Muskie. That's all I think this language says.
17 That is why I have no objection to eliminating the language,
18 providing that in agreeing to eliminate it, I am not agreeing
19 that he should not have the authority to identify the components
20 which cause the harm.

21 Senator Baker. I agree that it does not have that; that
22 he does have the authority to do that. But I think once again
23 that Section 212(a) at line 21, now at least arguably gives the
24 Secretary the right to ban the sale of fuel because of its
25 composition rather than because of its combustion by-products,

1 and I think that that, when read with lines 2 and 3 on page 68,
2 has to be changed to bring it in conformity with what you and
3 I, I think, are agreeing on

4 Senator Muskie. Well, if you agree to that, then we are
5 talking about language.

6 The Chairman. Ed, I would like to have you and Howard and
7 the other members of the committee give to Dick at this time
8 the opportunity to discuss a problem which he has gone over
9 with me, which has to do with not only emission, but with the
10 evaporation.

11 Senator Baker. Mr. Chairman, before you do, may I simply,
12 as a last word on this subject, read in a short suggestion on
13 language for this purpose?

14 The Chairman. Yes.

15 Senator Baker. It should read: "No manufacturer shall
16 introduce into interstate commerce any fuel, the combustion of
17 which", and go on with other requirements.

18 Senator Cooper. "Produces emissions" ---

19 Mr. Billings. "combustion or evaporation of which" --

20 Senator Baker. Yes, fine.

21 The Chairman. See, the evaporation is a very real part of
22 this, we think, in reference to emissions. I think it would
23 be good to just chat about it now a minute, if you will, Dick,
24 for the record.

25 Mr. Royce. Yes, sir. Thank you, Mr. Chairman.

1 There are some fuel additives that are under consideration
2 as a substitute for lead. Aromatic hydrocarbons, trimethyl
3 phosphate is one, which can be more of a problem, and which can
4 get into the ambient air just from evaporation, either from the
5 fuel tank or at the gasoline station.

6 NAPCA, National Air Pollution Control Administration, is
7 almost as much concerned about what happens when we fill the
8 tank as what happens in the burning, because they are making
9 headway on control, on emission controls, but there is a very
10 real problem from evaporation, both in storage and in just gaso-
11 line stations in filling the tank, so the focus should be on
12 combustion as well as evaporation, if the committee so desires.

13 The Chairman. Well, I think this is important enough to
14 have a discussion as it relates to both points, and I have dis-
15 cussed it, prior to our colloquy here today, which I think has
16 been helpful, between Ed and Howard.

17 In reference to 68, Ed, just for a moment, and I noted,
18 of course, the language that you have been discussing ---

19 Senator Jordan. Page 68?

20 The Chairman. Yes, page 68, the language that has been
21 discussed as perhaps lending itself to deletion, or at least
22 understanding, it is associated with what we are discussing,
23 although in a sense, apart from it, I would ask you to come
24 down to line 6, Ed, in connection with the Secretary's findings,
25 I would suggest, perhaps, that you might want to think in terms

1 "the Secretary finds would otherwise conform", and insert the
2 three words, "the Secretary finds would other wise be necessary
3 to conform" --.

4 I think this might be proper. At least, I think it is a
5 point for discussion and for your comment.

6 Senator Boggs. Where would you put the word "necessary"?

7 Mr. Royce. "otherwise be necessary to conform".

8 The Chairman. "otherwise be necessary to".

9 Those three words. It may have a relationship that makes
10 it advisable.

11 Dick, do you wish to make some comment?

12 Mr. Royce. Yes, sir. This would provide for a closer tie
13 between the fuel and the engine, and as was discussed at the
14 last Executive Session, we need to focus on the fuel and engine
15 as a system. This kind of language would allow the Secretary
16 to look at a fuel in relation to the other engineering op-
17 tions that might be available in emission control systems.

18 Senator Muskie. Well, I have no objection to that language.
19 The clause relates, modifies, of course, the words "vehicle or
20 vehicle engine".

21 The Chairman. That is right.

22 Senator Muskie. And I would have no objection to that
23 change, Mr. Chairman.

24 The Chairman. I would think it would behelpful. If there
25 are other members that might want to discuss it?

1 Senator Muskie. May I ---

2 Senator Boggs. I have no objection, but in relation to
3 this very question, I would like, Mr. Chairman, if I may, to
4 suggest we turn to page 62, Section 210.

5 Would you pass out copies of this, please? This involves
6 a question that I am having copies of my suggested amendment on
7 here.

8 Senator Muskie. This also relates to the same subject.

9 Senator Boggs. It relates to the same subject we are on.
10 Right.

11 The Chairman. Okay. If you will go ahead, sir, and per-
12 haps read or at least discuss your amendment.

13 Senator Boggs. Page 62, Section 210(a). You all have
14 copies of it, so I won't read the whole thing, but on line 21,
15 after the word "title", I would suggest the language underlined
16 here, "or prohibit or regulate directly or indirectly the sale
17 or use of any fuel or fuels which are not designated for regis-
18 tration in accordance with Section 212(a)", of which we were
19 just talking.

20 Senator Muskie. You mean "which are designated".

21 Senator Boggs. "Which are designated". Yes; excuse me.

22 Now this is to prevent the situation where any one or sev-
23 eral of the 50 States could prohibit or regulate the fuel in the
24 State area. Automobiles are interstate, anymore, and obviously,
25 in Connecticut or Delaware or any other State, we would have a

1 confused, mixed-up situation, it seems to me, unless this pro-
2 vision were included there.

3 Senator Muskie. Now, if that provision were included, it
4 would be subject to the same qualification that now is written
5 into that section, that the Secretary may permit more restrictive
6 emissions to implement national ambient air quality standards
7 for any air quality region within such State.

8 Senator Boggs. Right.

9 Senator Muskie. In other words, California under this
10 provision could come in, notwithstanding the language that you
11 have just suggested, and ask for and get, if the Secretary
12 approved, the authority to impose more restrictive fuel.

13 Senator Boggs. Right. I wouldn't change that at all.

14 Senator Muskie. I think that would be necessary.

15 Senator Boggs. I do, too.

16 Senator Muskie. I see no objection to this. I think it
17 is a logical extension of Section 210.

18 Senator Boggs. I think so.

19 Senator Muskie. And it provides for a loophole for the
20 States that need stronger medicine to get stronger medicine.

21 Senator Boggs. That is right. I wouldn't change that at
22 all.

23 Senator Muskie. But otherwise, it provides for national
24 uniformity.

25 Senator Boggs. Right.

1 The Chairman. Ed, do we have in the case of ---

2 Senator Muskie. May I suggest, Cale, I have a little
3 trouble with the word "indirectly"?

4 Senator Boggs. All right. Or prohibit or regulate.

5 Senator Muskie. Why don't we leave the words "directly or
6 indirectly" out?

7 Senator Boggs. Just leave the two words out? All right.

8 Senator Muskie. Yes, then we clearly limit it to direct
9 sale of fuel or fuels.

10 Senator Boggs. Very good. Yes. I have no objection to
11 that.

12 The Chairman. Ed, I would like to ask you a question.

13 I am perhaps a little in need of clarification as to States
14 that might have, let us say, on Diesel fuel, various laws and
15 regulations. What is that picture, in reference to the States?
16 How would it apply, if at all?

17 Senator Muskie. You mean this language Senator Boggs has?

18 The Chairman. Yes.

19 Senator Muskie. Well, it is Senator Boggs' amendment. I
20 don't know how it would apply to any existing State legislation
21 that relates to the sale of fuel. I don't know of any.

22 Senator Boggs. I don't think it would be retroactive in
23 any way. But it would preempt and provide for uniformity in the
24 sale of fuels, of what fuels could be sold, what couldn't be
25 sold, except that, as Senator Muskie has pointed out, it is

1 already in the law, if a State like California wanted to come
2 in to the Secretary, and on a showing, justification, get some
3 modification, it could. So I don't think it would be injurious
4 or affecting -- I can't imagine it would be.

5 Senator Muskie. Well, may I say this: First of all, as I
6 understand this language, and I haven't seen it before, ---

7 Senator Boggs. Right.

8 Senator Muskie. The language that Senator Boggs wants to
9 include would not become operative until such time as the Secre-
10 tary designates that fuel for registration under the provisions
11 of the bill.

12 Senator Boggs. Under Section 212. Right.

13 Senator Muskie. In other words, it would have no effect at
14 all until such designation took place.

15 Senator Boggs. Right. It is related entirely to Section
16 212, which we were just previously discussing.

17 Senator Muskie. Leon raises a point, Cale, that I ought
18 to raise.

19 Senator Boggs. Yes.

20 Senator Muskie. He suggests that "designation" ought not
21 to be the trigger word, but that "registration" ought to be,
22 because designation might not necessarily result in registration
23 under the provisions.

24 Senator Boggs. Designated for registration. The registra-
25 tions ---

1 Senator Muskie. Once the fuel is registered, and is sub-
2 ject to the regulation of the Secretary, in other words, then
3 from that moment on.

4 Senator Boggs. I can understand that.

5 Senator Muskie. From that moment on, you would preempt,
6 subject to the qualifications of this section.

7 Senator Baker. Which are what? You are subtracting the
8 designated?

9 Senator Muskie. Which are registered.

10 Senator Boggs. Do you see where that makes a difference?

11 Senator Baker. Yes, but of course, "designated for regis-
12 tration" is the language of 212(a).

13 Senator Muskie. But then the following provisions of that
14 section, then -- I mean, the purpose of the designation is
15 registration, and the designation itself doesn't make the fuel
16 necessarily subject to regulation by the Secretary.

17 It is only when it has been registered that it becomes
18 operative. It is a technicality, but I think it is an important
19 one.

20 Senator Boggs. I have no objection to that.

21 Senator Muskie. So that as we have now modified it, it
22 would read "prohibit or regulate the sale or use of any fuel or
23 fuels which are registered in accordance with Section 212(a) of
24 this title."

25 Senator Boggs. Right. The purpose is to prevent the

1 States and local governments from establishing a multiplicity
2 of diverse and conflicting regulations in regard to the sale and
3 the use of these fuels, to assure, rather, uniform application.
4 You have got to have that, between Delaware and Maryland, Penn-
5 sylvania, New Jersey; you just couldn't do otherwise.

6 Senator Muskie. I think that is right. And if a State has
7 a particular pollution problem ---

8 Senator Boggs. They can come to the Secretary.

9 Senator Muskie. ---that calls for stronger medicine, there
10 is provision here for the Secretary to do that.

11 Senator Boggs. Right.

12 Senator Jordan. Los Angeles has that problem.

13 Senator Muskie. Yes.

14 Senator Boggs. I am satisfied with the language.

15 Senator Cooper. This is a purely technical thing. States
16 do have regulations for safety purposes, and other purposes. I
17 thought perhaps before the word "or", including the prohibition
18 or regulation, then it refers back with relation to the control
19 of emissions, you see ---

20 Senator Boggs. Yes, I wouldn't have any objection.

21 Senator Cooper. Then you have "safety regulations".

22 Senator Muskie. We might include language of this kind
23 after the word "regulate",: "for the purpose of emission con-
24 trol", or something of that kind. It might be something better
25 than that. That is your point?

1 Senator Cooper. Yes.

2 Senator Boggs. That's good, yes.

3 Senator Muskie. Is there any other question about Senator
4 Boggs' amendment?

5 The Chairman. Well, Ed, at this point, I think that per-
6 haps rather than here, but on the broader problem, I would want
7 us to give some consideration to the problem of the fuels and
8 the problems of powers relating to aircraft that operate, because
9 there is a situation here that we must consider, and that is
10 the actual power within the aircraft which has to do with the
11 safety in flight of the passengers.

12 I think it is a broader subject, but I mention it because
13 we are discussing here aircraft engines, and I just think a
14 little later, I would like to have us know that I want to go
15 into that situation rather in a depth that I don't want to dis-
16 cuss it here.

17 There are some problems that I am cognizant of that we
18 might want to go over very carefully.

19 Senator Muskie. Well, it doesn't strike me that that would
20 relate to Section 210.

21 The Chairman. Well, there are a couple of other sections.

22 Senator Muskie. But I was wondering, I raise that point
23 only to see if we could dispose of this question.

24 Senator Young. Mr. Chairman, this is a vote.

25 The Chairman. I am sorry. I didn't hear.

1 Senator Young. And when shall we resume?

2 The Chairman. Well, earlier today, we agreed -- I believe
3 we agreed, I want to make sure -- that we would attempt to come
4 back after this vote.

5 Senator Muskie. As quickly as possible.

6 The Chairman. Now I believe that was the general feeling,
7 Steve, that we would try to come back. Well, I would think
8 probably by 11:30, or 11:25.

9 Senator Muskie. As soon as we can.

10 The Chairman. Thank you, Steve.

11 Senator Young. Maybe we can make it 11:25.

12 Senator Muskie. Can we agree that this Boggs Amendment has
13 been taken care of, and that we will go on to the rest of the
14 provisions on page 68? All right?

15 The Chairman. All right. I think that at least for the
16 moment we can say so.

17 Senator Muskie. Oh, yes.

18 The Chairman. I see nothing there.

19 (Whereupon, a short recess was taken at 11:02 a.m. until
20 11:35 a.m.)

21 The Chairman. Thank you, gentlemen.

22 Gentlemen, you recall that earlier today, Senator Muskie
23 indicated that he had a possible appointment with his colleague
24 from Maine, Mrs. Smith. Pardon me, I should say "Senator Smith"
25 -- there is no difference between a man and a woman -- I am very

1 sorry. But I wanted to tell you that he is in that conference,
2 but he did request that we go forward and discuss the matters
3 that we can, and Leon, I would think you and other members of
4 the staff, or the subcommittee and the full committee, perhaps,
5 could bring these matters along, with, of course, the understand-
6 ing and cooperation of the members.

7 We do have this situation, which I have checked. The
8 Percy Amendment, which is pending, will apparently be the sub-
9 ject of a rollcall at about 12:15 to 12:20. I would think,
10 therefore, that even in the absence of Senator Muskie, that we
11 might think in terms of, of course, of necessity, stopping at
12 that point, and I would like to have your consultation as to
13 whether you feel that there is a possibility, with your schedules
14 of returning sometime this afternoon, and I am not sure of
15 what Senator Muskie's problems this afternoon are.

16 If there is some light that you can shed ---

17 Mr. Billings. I think at the moment the question is whether
18 or not he becomes involved with the question of the procurement
19 bill relative to the Bath Iron Works.

20 Senator Baker. To what?

21 Mr. Billings. The Bath Iron Works, destroyer contract,
22 Litton Industries, or something to do with this, but I am not
23 really familiar with it. In any event, he may or may not be
24 debating the issue on the Floor this afternoon. He is free, if
25 he is not.

1 The Chairman. Now how do you men find your schedules?

2 Senator Boggs. I am all right after 2:30, Mr. Chairman.

3 I am available after that. I have appointments set up that will
4 take me to 2:30, and after that, I am clear.

5 The Chairman. How are you, Everett?

6 Senator Jordan. That would be about my prediction. I
7 ought to be over at Agriculture, trying to write a bill, but I
8 can get back by 2:30.

9 The Chairman. I have an appointment at 2:30 which will not
10 take too long. It was the only time I could set it.

11 Senator Jordan. Let me look here.

12 The Chairman. Could we tentatively set three o'clock,
13 John? Would that help?

14 Senator Cooper. I can't be at 2:30.

15 The Chairman. You can't be at 2:30, and I have a problem.
16 Is three o'clock agreeable for a try? Then it will depend
17 somewhat. We want Senator Muskie to participate with us.

18 Well, let's continue then, at this point, until the roll
19 call, or at least until you feel we should conclude.

20 Dick, are you and Leon prepared to sort of pull us together?

21 Mr. Royce. Yes.

22 Senator Cooper. Mr. Chairman?

23 The Chairman. Yes, John.

24 Senator Cooper. Before we leave Section 212, I would like
25 to ask a question. On page 67, lines 12 and 13, you find these

1 words "including fuels used for purposes other than vehicles".
2 Now I thought this section deals with fuels used by vehicles.
3 What else would be included?

4 Senator Jordan. What page is that?

5 Senator Cooper. Page 67.

6 Does it include fuels used by aircraft?

7 Mr. Royce. Yes, sir.

8 Senator Cooper. Vessels?

9 Mr. Royce. Vessels and aircraft.

10 Mr. Billings. And it would include home heating oils.

11 The Chairman. Home heating oils?

12 Senator Cooper. Yes. Coal is a fuel.

13 Senator Boggs. It is in existing law that way.

14 The Chairman. It would seem to me, John, if you would
15 turn to 67, that we should here have "registration and regula-
16 tion of fuels and fuel additives". And then that gives us a
17 chance to work under -- I think it goes to fuels as well as
18 additives.

19 Senator Cooper. Yes.

20 The Chairman. Fuel additives.

21 Senator Boggs. "Registration and regulation of".

22 Senator Cooper. This is a specific question: Do you
23 include coal?

24 The Chairman. Well, I won't attempt to answer for the
25 staff. I think it does, but maybe they will say "no."

1 Mr. Royce. If I may, Mr. Chairman?

2 The Chairman. Yes, Dick?

3 Mr. Royce. I think eventually, if we develop gasification
4 of coal, that that would be included.

5 Senator Baker. I think it is included now.

6 Mr. Billings. It is, I think. Mr. Chairman, I think for
7 the purpose of registration, it is included. The prohibition
8 only goes to fuels that would be used in vehicles and vehicle
9 engines.

10 Senator Baker. Where does it say that, Leon?

11 Mr. Billings. "The Secretary may, on the basis of informa-
12 tion obtained", with your language -- no, I see. We would have
13 to modify that, which produce emissions from vehicles and
14 vehicle engines, which would endanger health and welfare.

15 The intent of the prohibition is to go to fuels that would
16 be used in vehicles and vehicle engines which produce emissions.

17 The purpose of the registration is to go to all fuels, so
18 that the Secretary can have information on what is going in, so
19 he can figure out what is coming out.

20 Mr. Royce. As I read the language, the prohibition runs
21 only to vehicles and vehicle engines. Line 6 of page 68.

22 Mr. Guard. That part of it goes to vehicles, and depending
23 on whether you thought that line 1 in the earlier prohibition
24 comprehended only vehicles, or that you would separate endanger-
25 ing the public health and welfare from this purpose of impairing

1 the performance of any vehicle.

2 To make it clear that that whole prohibition only goes to
3 vehicles, I think you should say on line 2, or whatever the
4 modified language is of Senator Baker, whether the use or
5 manufacture or use of any vehicle fuel ---

6 Senator Cooper. Any vehicle fuel.

7 Mr. Guard. If that's what you want to do, Otherwise, you
8 could prohibit the use of coals or fuel oils which you deem to
9 be injurious to the public health and welfare.

10 Mr. Billings. I think you go closer to what Senator Baker
11 is trying to do if you say, "fuels which produce emissions which
12 endanger the health or welfare or impair the performance of" --
13 because then you are talking about end result

14 The Chairman. Speak up, Leon.

15 Senator Cooper. I heard him.

16 I thought the section dealt with fuels used in vehicles.
17 Is that correct? Or does it embrace -- well, just to get back
18 to my question, coal?

19 Mr. Royce. Yes, sir. The registration provision would
20 embrace all fuels.

21 The Chairman. I don't know about that, now.

22 Senator Cooper. The penalty for the enforcement measures
23 here, would they apply, then, to coal?

24 Mr. Guard. If they are not registered, and if they don't
25 disclose or ask for its chemical composition.

1 Mr. Royce. Designate for registration ---

2 Senator Boggs. I think it includes everything for regis-
3 tration, doesn't it? It is a fuel. Regulation of fuel addi-
4 tives. That's all we are talking about.

5 Senator Baker. What about nuclear fuels? Would they come
6 under this section?

7 Mr. Royce. Well, now, the staff apparently is a little ---

8 Mr. Billings. Fuels without any limitation, as it is pres-
9 ently written, any fuel would be subject to the registration
10 provisions of the section. I say that without any additional
11 comment. I would see no limit on what a fuel would be, under
12 this provision.

13 Senator Baker. Senator Jordan asked about lighter fluids.

14 Mr. Billings. That would be subject to the provisions of
15 the section.

16 Senator Boggs. Is that what we want to do?

17 Mr. Billings. I am not certain that it is. I would assume
18 that what the committee is primarily interested in is fuels
19 which can be altered in their structure, and which can go,
20 altered in their structure and then combusted or released, into
21 the environment.

22 For the Administration bill, if you recall, talked about
23 the chemical composition and physical characteristics of the
24 fuels, and fuel additives. What the obvious intent was, was to
25 get at those fuels which were combusted or used in really moving

1 sources, for transportation sources, aircraft and motor vehicles,
2 trucks, buses, in order to make sure that devices, control sys-
3 tems would not be impaired, and that reasonable reductions in
4 emissions which could be accomplished by altering the nature of
5 the fuel would be accomplished.

6 I think that the quickest way to solve the problem is to
7 go to the fuels used in transportation, if that's what you want
8 to do, or fuels that contain additives.

9 The Chairman. Dick, would you want to make comments here?

10 Mr. Royce. Yes, sir, if I may, Mr. Chairman.

11 There seems to be some inconsistency in the provision.
12 While 212(a) runs to all fuels, the designation, yet 212(c)(1),
13 the registration or the authority for the Secretary to require
14 from the manufacturer such information, runs only to vehicle
15 engine fuel. This is (c)(1), Senator.

16 I think the staff needs direction from the committee to
17 resolve this inconsistency, and also perhaps add a definition,
18 and this has been suggested by Dick Grundy: "'Fuel' means any
19 hydrocarbon material sold for use as a source of energy obtained
20 by a combustion reaction. 'Fuel additive' means any substance
21 present in fuel which contains elements other than carbon and
22 hydrogen."

23 The Chairman. Dick, I want to interrupt.

24 The Chairman of our Subcommittee and all Members are con-
25 cerned not only with this vote, and we can't do what we did

1 before, almost run and get there, but we must have time.

2 Now, it is my thought that if agreeable, we meet at three
3 o'clock this afternoon.

4 Is that agreeable with you, Steve, that we meet then?

5 Senator Muskie. May I suggest that I am going to have to
6 leave at four, because I have to go out of town. I will be back
7 tomorrow, but I would hope that if other Senators can stay,
8 that you continue beyond the time that I leave this afternoon,
9 because there are a lot of things here that you can deal with.

10 The Chairman. We will think in terms of doing as much as
11 we can, and meet, then, at three.

12 Thank you.

13 Whereupon, at 11:50 a.m. the committee recessed, to recon-
14 vene at 3:00 p.m. the same day.)

end
GOODMAN/
emcg

LaFrance/
Ward fls

AFTERNOON SESSION

3:00 p.m.

Senator Muskie. The committee will be in order. Did we get rid of fuel registration.

Mr. Billings. We are getting it retyped. We will have to check.

Senator Muskie. Let us go on to the used car business which is on page 64. We will start on page 64 and go to the middle of page 67. The technique here is to authorize the Secretary to promulgate federal standards of performance for used vehicle emission control devices or systems and in certifying devices that meet those standards. Is that right.

Mr. Billings. That is right.

Senator Muskie. The test is technical feasibility. Is that right.

Mr. Billings. Yes, sir.

Senator Muskie. Is that the heart of the amendment.

Mr. Billings. The purpose of the provision is to have a credited devices that will be available if the states or communities move to require installation of devices on used vehicles but this does not mandate the installation of devices.

Senator Muskie. The whole purpose here in other words is to stimulate the development of devices to control emissions from used cars in accordance with standards that the Secretary sets. With such certification available it is the hope that manufacturers will be stimulated to develop them

1 to meet standards set by the Secretary.

2 Senator Eagleton. I have not read this, Mr. Chairman.

3 How do we stimulate. Do we give them some dough.

4 Senator Muskie. No, simply making certification available
5 according to standards. Now the manufacturers of devices are
6 constantly looking for a way to get an endorsement in order to
7 promote the interest in their devices. Here is a way of getting
8 certification, if they can meet the standards.

9 Senator Eagleton. Then they can advertise we have a good
10 housekeeping seal?

11 Senator Muskie. Yes.

12 Mr. Billings. With federal certification they can
13 stimulate communities or states to require installation fees
14 for devices.

15 Senator Eagleton. It is relatively innocuous.

16 Senator Muskie. It is, it is innocuous. It is an effort
17 to get at the problem. From what I have seen of the interest
18 of various groups developing devices it may be a sufficient
19 stimulant.

20 Senator Eagleton. It will be a race to be the first guy
21 to get a certification.

22 Senator Muskie. I suspect Midas Muffler might get in
23 the field.

24 Mr. Billings. It might take some of the crackpots off
25 the market.

1 Senator Eagleton. Don't talk that way about your brother,
2 Leon.

3 Senator Muskie. Is there any objection to this provision?
4 If not I assume it is tentatively approved.

5 Senator Cooper. What influence does this have on the
6 owner of the car?

7 Senator Muskie. None. The owner of the used car under
8 this bill would be subject to whatever policies the urban
9 areas may have to adopt to restrict.

10 Senator Cooper. Whatever the pollution was in a certain
11 urban area.

12 Mr. Royce. This would be in the implementation plan,
13 Senator.

14 Senator Muskie. We couldn't think of anything tougher
15 than this to do about used cars frankly in this bill. That
16 is about what it amounts to.

17 Without objection then we will proceed.

18 Senator Gurney. Ed, did you give any thought about used
19 cars that are on used car lots for sale? Are we requiring
20 any devices on those?

21 Senator Muskie. There was some thought given to requiring
22 installation of devices on used cars as they were sold. But
23 we weren't satisfied with the viability of that approach.
24 That is the time when you would do it I think.

25 Senator Gurney. Yes, that is the time I was thinking of.

1 Senator Muskie. But the devices are not presently available
2 really in the form that you could justify requiring all these
3 millions of owners to make that kind of investment at this
4 time.

5 Mr. Royce. May I comment, Mr. Chairman.

6 Senator Muskie. Yes.

7 Mr. Royce. It is not only that the devices are not
8 available, effective ones, but they all require considerable
9 tune up of the engine, itself, carburation, ignition and spark
10 plus system, and there are probably not enough mechanics in the
11 United States and won't be. We are already short about
12 250,000 mechanics just to service cars as they are. This is
13 the main obstacle.

14 Senator Muskie. Without objection then we will turn to page
15 19.

16 Mr. Chairman, we have taken up the used car provision.
17 We have now turned to page 19 in the court extension. Now the
18 purpose of this provision --

19 Senator Young. Where are you reading from.

20 Senator Muskie. Page 19, line 8.

21 The purpose of this provision is to use the courts to
22 extend the national deadlines for ambient quality standards.

23 Senator Young. We have some big words here, attainment
24 of ambient air. Can you inform us --

25 Senator Muskie. Ambient air is the air that surrounds us.

1 Senator Young. Why use the word ambient in there.

2 Senator Muskie. I agree with you, Steve. I wish there
3 were a more descriptive word to use but it is the air everyone
4 breathes.

5 I think this is short enough to read so that we can each
6 understand what it says so I will undertake to do that.

7 "No later than one year before the expiration of the
8 period for the attainment of ambient air of the quality
9 established by any national ambient air quality standard, pursuant
10 to section 110 of this Act, the governor of the state in which
11 all or part of an air quality region designated or established
12 pursuant to this act is located may file a petition in the
13 District Court of the United States for the District in
14 which all or a part of such air quality control region is
15 located against the United States for relief from the effect
16 of such expiration (A) on such region or portion thereof or
17 (B) on a person or persons in such air quality control region.

18 "In the event that such region is an interstate air quality
19 control region or portion thereof any governor of any state which
20 is wholly or partially included in such interstate region shall
21 be permitted to intervene for the presentation of evidence
22 and argument on the question of such relief."

23 Let me interrupt my reading to make clear what we are
24 talking about, especially to those members of the full committee
25 who have not been in on the discussion.

The bill provides for the setting of standards to meet a national deadline which will be three years after the standard is promulgated. If before two years of that three years have expired the governor of a state decides that it is impossible within a region to met those standards by the end of three years, then he uses this section to apply for relief. Now the next subsection spells out the basis for that relief.

"Any action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 of the United States Code (3) (A)."

"In any such proceeding the Secretary shall intervene for the purpose of presenting the evidence and argument on the question of whether relief from the effect of the expiration of the period should be granted.

"(B) Any interested party residing in any affected state may intervene for the presentation of evidence and argument on the question of relief.

"(4) The court in view of the paramount interest of the United States in achieving ambient air quality necessary to protect public health shall grant relief only if it determines such relief is essential to the public interest and the general welfare of the United States, after finding (A) that substantial efforts have been made to protect the health of persons in such region; and (B), that means to control emissions causing

1 or contributing to such failure are not available or have not be
2 available for a sufficient period to achieve compliance prior
3 to the expiration of the period to attain an applicable
4 standard; or (C) that the failure to achieve such ambient
5 air quality standard is caused by emissions from a federal
6 facility for which the President has granted an exemption
7 pursuant to section 119 of this Act."

8 Now, those are the three reasons which are sufficient for
9 granting relief. Finally, the fifth subsection, "(5) the
10 court in granting such relief shall not extend the period estab-
11 lished by this act for more than one year and may grant renewals
12 for additional one year periods only after the filing of a new
13 petition with the court; (B) the court may require steps to be
14 undertaken to reduce any potential adverse effects on the health
15 of persons during any period of extension in such region; and
16 (C) may direct the Secretary to modify any implementation plan
17 developed under this act in a manner necessary to attain
18 ambient air of the quality established by any national
19 ambient air quality standard in the air quality control region
20 affected."

21 Now this section had considerable working over by the sub-
22 committee but this particular language was not available in
23 the subcommittee, it incorporates however all of the ideas that
24 the subcommittee agreed upon the last time we discussed it.

25 The Chairman. Ed, I would like to direct our attention

jlw 8

1 to page 20 under the 3(B), "any interested party residing in any
2 affected state may intervene for the presentation of evidence
3 and argument on the question of relief."

4 Now that might be very easily understood by most members
5 but to me it would be helpful to outline what the intervention
6 is and the way it would present itself to evidence. I presume
7 an attorney or others would want to comment but I would like
8 to know the methods by which that evidence could be
9 considered.

10 Mr. Royce. Mr. Chairman.

11 The Chairman. Yes, Dick.

12 Mr. Royce. The staff has discussed this and it will be
13 rather extensive and legal proceedings. Tom Jorling has
14 substitute language that will cut down the proceedings and cut
15 down the committee's consideration of this.

16 The Chairman. Fine. Tom?

17 Mr. Jorling. The question is what is entailed in the
18 word "intervene." The staff concluded that that would
19 probably open all the discovery and pretrial proceedings
20 provided for under the civil rules procedure. Therefore
21 since this might have the effect of slowing what we hope is an
22 expedited proceeding we thought of this substitute. I will
23 read it:

24 "Any interested person residing in any affected state may
25 file with the court a brief of amicus curiae in any

1 action brought pursuant to this subsection," which would
2 simply provide that the court could receive any brief filed by
3 any person in that region on this question of relief and I think
4 then if the court wanted to make them a party it would have
5 discretion to do so but it would avoid making available as a
6 matter of statutory privilege the right to intervene.

7 One other question that Senator Baker raised when we went
8 over this yesterday and I think some other members, Senator
9 Cooper I think raised this too, how in the statute to indicate
10 an intent that this proceeding be expedited so that the action
11 could be disposed of before the expiration of the period.

12 In looking through the code there are several precedents
13 for telling the court to expedite it. I will read two of
14 them. Senator Baker said either of them are satisfactory to
15 him.

16 "It shall be the duty of the judges designated to hear
17 the case to assign the case for hearing at the earliest
18 practical date to participate in the hearing and determine
19 thereof and to case the case to be in every way expedited.

20 "An alternative would be proceedings before the three-
21 judge court as authorized by this section take precedence over
22 the dockets of all other cases and be assigned for hearing
23 and trial at the earliest practical date and expedited in
24 every way."

25 This action is being brought by a governor before a three-

1 judge bench. I think that that itself is going to lead to expe-
2 dited treatment. The governor usually gets expedited
3 treatment.

4 Senator Eagleton. Is there precedent in the statutes.

5 Mr. Jorling. The latter clause is from the information
6 act, the former is from the voting rights.

7 Senator Gurney. Getting back to the original language
8 proposed to be substituted by Tom, would that preclude the
9 giving of any evidence --

10 Mr. Jorling. He could contain that in his petition or
11 amicus curiae brief.

12 Senator Gurney. Even so he could not produce witnesses.

13 Mr. Jorling. That is right.

14 Senator Gurney. I don't think that would be particularly
15 fair because after all the governor is only the vehicle for the
16 intervention really. Of course the charged pollution is going
17 to be caused by somebody or something. I think that party
18 ought to be able to get before the court to present his case.
19 Certainly simply the filing of a brief I don't think would
20 be an adequate way to present a case in court.

21 The Chairman. Tom?

22 Senator Eagleton. If I could I would like to expand on
23 what Ed has said. I think in some ways I am probably in agree-
24 ment on this. Senator Randolph raises a good question and
25 it might be catholic to permit every Tom, Dick and Harry, the

(3) (B) is now written, to get into the case, put on witnesses, make arguments, subpoena records and take depositions and it would perhaps be catholic and drag the damn thing out.

I think Ed raises a good point. Not only do I think that the implied polluter or polluters ought to have a right to submit at the evidentiary level -- filing of a brief is a pretty sterile remedy. A brief contains commentary on the law and what have you and it is submitted to the judge and the judge can read it or leaf through it as he wants but it is a rather meager remedy. I think discretion ought to be given to the three judges to permit at his discretion, trial judge's discretion, in the interests of justice and in the interest of a full hearing of the case, however you want to phrase it, interested parties which would be broad enough to include accused or alleged or implied polluters.

It would also be, say, the Sierra Club of St. Louis if the case is filed in Missouri as a class and they have a deep interest in this, represent a class, and they want to come in with other witnesses.

The judge in his discretion can say "this will drag it out, I will draw the line here." Give him the discretion.

The Chairman. I subscribe to your thinking in this matter generally. As I say, not as a lawyer but concerned here with evidence and how broad it would be, I have raised the question. I know many of you who are attorneys have contributions to make

1 on this subject.

2 Senator Eagleton. Do we need to find if we go this
3 discretionary route or do we go by report language, that by
4 interested party, or whatever the art may be, that it can
5 come in under the discretion of the judge, that interested
6 party is not just a potential polluter but also could be
7 a class or group that has something to contribute to the
8 case, that is not in there as harassment.

9 Senator Cooper. It could be a group of citizens who
10 believe the standard could be met.

11 The Chairman. I would like to make a further suggestion,
12 not to have members not proceed to discuss this point, but it
13 might be helpful, Ed, for us to staff the staff work on
14 language to bring it back, thinking in a sense about what
15 has been said here.

16 John, would that seem to be a helpful procedure or would
17 we want to direct the staff perhaps more definitively than I have
18 suggested.

19 Senator Cooper. I thought that the views of Senator
20 Gurney and Senator Eagleton are pretty much together. It is a
21 question of establishing priorities in the trial of a case.
22 I think we have agreed in principal.

23 Senator Muskie. Does the staff need any further guidance
24 on this question.

25 Mr. Jorling. I think we have it.

1 Senator Muskie. I think we are in agreement on it, Mr.
2 Chairman.

3 The Chairman. Then we will proceed with the general
4 understanding of the viewpoints which have been expressed and
5 the staff will prepare language for return for committee
6 approval.

7 Senator Muskie. May I ask if there are any other questions
8 about this provision?

9 Senator Gurney. One question, Ed. In line 16 and line
10 17 "such relief is essential to the public interest and general
11 welfare of the United States." Is that language of art
12 generally found in these statutes?

13 Senator Muskie. What we have tried to do, Ed, first
14 of all, you see, we want these deadlines to be reasonably
15 brief, on ly in the rare situation. We wanted to indicate
16 and that is the reason for the language in lines 13, 14, that
17 the court ought to have in mind the paramount interests of
18 achieving ambient air quality in accordance with the law.

19 But we recognize that in the particular area the deadline
20 may ask for the impossible. If that is the case, such relief
21 would be essential in the public interest and the general
22 welfare of the United States. We have given three specific
23 clues that we hope will be pretty much exclusive of any other
24 as to when such a finding could be made. Those are the three
25 that we have listed in line 18 on page 20 through line four

1 on page 21. So, we put in the language that you have referred
2 to in order to indicate that if we have asked for something
3 impossible under the conditions that we have listed here,
4 then it is in the public interest that relief be granted.

5 That may be a little tortured explanation but we want
6 a balancing that gives the emphasis to preserving that deadline
7 if at all possible. For those of the subcommittee who were
8 involved in the discussion at the subcommittee level may I ask
9 whether this language now shapes up?

10 Senator Cooper. Is it possible to define two sets of
11 facts? One under (A), (B), (C), the other is limited to the
12 general welfare of the whole country, public interest. Is that
13 intended?

14 You could find in a region or a state it is impossible
15 to meet the standard or that substantial efforts have been
16 made to protect the health. How can you find that if you stop
17 it that it is essential for the public interest and general
18 welfare of the whole country if you extend it.

19 Senator Muskie. Why don't we say instead of "the
20 United States," the people of the region. That is really
21 what we are talking about, John.

22 Senator Cooper. That is my question.

23 Senator Muskie. Is that your point?

24 Senator Cooper. Yes. It won't be as stiff a prohibition
25 or method but the two sets of facts you find are contradictory

1 unless you say for the region.

2 The Chairman. Tom, do you have any thinking on this
3 matter?

4 Senator Eagleton. Not on page 20. I have some questions
5 on page 21.

6 Senator Muskie. I don't really think we had in mind
7 that sort of thing. The paramount interest thing is here.

8 Senator Gurney. The reason I asked the question really
9 was whether you had a line of cases involving the general welfare
10 of the United States or public interest of the United States
11 and what effect it might have on the act. That is what I
12 was asking.

13 Senator Muskie. What we were trying to identify is those
14 cases where in the interest of the public welfare, we were
15 really thinking of the public welfare of the people of the
16 region and their interest. Those conditions under which an
17 extension of time would be justified in the public interest,
18 notwithstanding the paramount interest in achieving higher air
19 quality. We wanted to make that door as narrow as possible.
20 This is the result of our efforts. We felt that if the
21 region had really tried, real efforts had been made, and it was
22 simply an impossibility to product the means available, that in
23 those instances then it would be in the public interest to
24 grant relief. There will be a lot of howls about the loophole
25 being too big but I think we have narrowed it pretty well.

1 Senator Gurney. I certainly understand what you seek to
2 do. I think the language is fine there. My inquiry is simply
3 if we are running into any roadblocks in previous cases.

4 Senator Muskie. I think the question you raised has
5 reference to the question Senator Cooper raised. We narrow
6 that to the public interest and general welfare of the
7 people of the region that we have met both your points.

8 Senator Cooper. He is thinking of something else. There
9 have been cases where those terms have been considered, whether
10 or not there were such cases as precedent.

11 Senator Muskie. I doubt that there are any with respect
12 to this subject. There may be others with respect to other
13 subjects. Do you know, Tom?

14 Mr. Jorling. I think general welfare is a very common
15 test in most constitutional cases because that is the phrase
16 that appears in the Constitution.

17 Senator Baker. Mr. Chairman, haven't we put in three
18 lines too many. Would it not be better and more precise if
19 it read "the court, in view of the paramount interest of the
20 US in achieving ambient air quality necessary to protect public
21 health, shall grant relief only" on a finding of these things,
22 and then strike the rest of it, subparagraphs A, B and C?

23 Strike the lines "if it determines" and so forth, "strike
24 all that.

25 Senator Muskie. Didn't we want to add the thought that

1 even if A and B are found to be true that in addition there
2 must be a finding that it is in the public interest and the
3 welfare of the people of the region to grant an extension.
4 That would shut down an essential plant or create unemployment
5 in that region. Maybe what I am talking about is that there
6 ought to be an (A), (B), (C) and (D) here.

7 But we put it in the place we did in order to indicate
8 that the aura of the whole decision ought to be a public
9 interest decision.

10 Senator Baker. Maybe there ought to be an "and" before
11 the asterisk.

12 Senator Muskie. "And" after finding.

13 Senator Baker. I think that is what we mean.

14 The Chairman. Yes, I do. Howard, I understand you are in
15 agreement so far as region is concerned, is that correct?

16 Senator Baker. Yes, sir.

17 Senator Muskie. On line 15, Leon tells me after the
18 word "health" should be the phrase "of persons."

19 Mr. Billings. Air quality standards are based on the
20 statute for the protection of health of persons.

21 Senator Muskie. "Shall grant relief only if it determines
22 such relief is essential to the public interest and the general
23 welfare of the people of the region, after finding."

24 Are there any other questions or suggestions? Tom,
25 you have it on page 21.

1 Senator Eagleton. The first two nit-picking points, my ma
2 tells me, on page 19, line 16 says that the suit against the
3 United States for relief. Should it not be a suit against the
4 Secretary? Does the suit run against the US or Elliot
5 Richardson, Secretary.

6 Mr. Jorling. They are suing for relief from something tha
7 the Congress has mandated. The question was whether we in
8 a sense made the Secretary the defendant if somebody challenged
9 it or just leave it against the United States with the
10 Secretary as an intervening party. Basically what it is, it
11 is almost a declaratory judgment kind of proceeding.

12 Senator Eagleton. I am troubled on page 21 because I
13 don't understand on line 10 what that subsection (C) really
14 means. This is the relief that the court can give, after he
15 hears the evidence and all that.

16 (C), what does that mean?

17 Mr. Jorling. If you recall, the subcommittee had before
18 it a rather extended subsection or subparagraph itemizing those
19 kinds of orders that the court could issue in the situation
20 where it made a judgment that relief in the sense of an
21 extension would not be granted and that precipitated discussion
22 which lead to the development of this section, restricting
23 this court's ability to enforce against polluters or contributors
24 to the violation, to the inability to obtain the quality of
25 air in that short period of time, to require those steps, and

1 this is in paragraph (B), to require those steps undertaken to
2 reduce any potential adverse effects on health. Then sub-
3 paragraph (C) was in the second that was before the subcommittee
4 and simply allows the court to order the secretary to review
5 the implementation plan, modify and reissue it in line with
6 the court's finding rather than have him issue particular
7 orders that simply says they need a new implementation plan
8 or elements thereof and so execute it.

9 Senator Eagleton. Could a court after hearing the evidence
10 say "I think the implementation plan as approved by the
11 secretary back a few years ago is ridiculously stringent?"

12 I am hypothesizing under (C) if the court can do the
13 following, the three judge court, after hearing all of the
14 evidence, and say "I think that plan that Richardson approved
15 a few years ago is ridiculously stringent. I will not buy all
16 this clean air business because we will drive lots of people
17 out of business. I will derive a new plan. We will hereby
18 under clause (C), we three judges, write a brand new plan and
19 hence for the region X will be as follows," and spell out a plan
20 that they find to be more functional by their three-man
21 court.

22 Is that envisioned by sub (C) that we want to do that.

23 Senator Muskie. Let me add some language that we
24 intend here.

25 "(C) may direct the secretary to review and if necessary

1 to modify any implementation plan."

2 Senator Eagleton. With that what is the answer to my
3 hypothetical.

4 Mr. Billings. The answer is that the tentative provision
5 is not to make the implementation plan less stringent but
6 to make the changes necessary in the implementation plan to
7 insure attainment of air quality standards if the court
8 decides not to grant the extension. Therefore the language
9 would need a slight change to assure that the court could not
10 direct the modification that would alter the natural air
11 quality standards.

12 Senator Muskie. You may need modification of the plan in
13 either case. If you grant the extension for a year I would
14 assume that the implementation plan may have to be modified
15 with respect to emission, with respect to timetables.

16 Senator Eagleton. Should not the plans speak for itself.
17 Unfortunately this district could not make it. They tried
18 under (A) and could not make it. But the plan itself is
19 not totally meritorious. They can get various extensions of
20 the plan. Why do we change the plan.

21 Mr. Billings. The plan includes emission requirements.
22 Those emission requirements are enforceable. There would be
23 financial, there would be criminal penalties against violation
24 of the implementation plan. The court by an extension then
25 would continue to operate in the same manner as if the court

1 had not granted an extension in so far as relationship of the
2 abatement provisions and the polluter.

3 Senator Baker. Mr. Chairman, I don't ever like to
4 be in the attitude of I told you so but you will remember at
5 the last executive session that Senator Spong and I and
6 Senator Eagleton had a colloquy about the two alternative
7 possibilities. One was to limit jurisdiction to saying "yes,
8 we will extend it" or "no, we won't," versus saying that the
9 court once it takes jurisdiction can take it for all
10 purposes. I don't know that anybody agrees with me but I still
11 think we ought to narrowly limit the authority of the judiciary
12 to decide it will or will not extent the limit.

13 Senator Muskie. That is the point. I don't know anybody
14 who advocates that. Obviously if the implementation was geared
15 to a three year period for compliance and you now change it to
16 a four year period this is going to necessitate some modification
17 of the plan.

18 It does not mean that you start ab initio but certainly
19 you are going to have to change the blueprints for no other
20 reason than you have insights in the problem that now dictate
21 extension that weren't taken into account when the implementation
22 plan was written in the first instance. You could do it this
23 way. It may direct the secretary to take such other steps
24 as are necessary to implement the original objectives of the
25 implementation plan and to adapt them to the new time frame.

1 That is what we have in mind doing. If it is not done in
2 this proceeding then there is some other provision that will
3 have to be made somewhere to do that. Otherwise you are going
4 to have a three year implementation plan undertaking to do the
5 job for a four year period without anybody having authority
6 to modify the plan to fit the new interest.

7 Senator Baker. The secretary does.

8 Senator Muskie. He does not under any other provision.

9 Senator Baker. He does under the authority to promote
10 the plan.

11 We might bear in mind too, just for perspective, that
12 when the bill was first draw there was no judicial authority
13 at all, none.

14 Senator Muskie. He has to start a whole new process
15 here. The court is giving a year's extension. You look for
16 the process for changing implementation plan. There is a 90
17 day period, another four month period and then another year
18 under the other procedure.

19 So, if you limit the court to simply extending, granting
20 the extension, then the secretary has the job of fitting in a
21 19 month procedure for changing the plan into a years extension.

22 Senator Baker. You don't have to do it that way. You
23 can change that provision.

24 Senator Muskie. Why not do it here?

25 Senator Baker. Because I don't want the court to write

1 the plan.

2 Senator Muskie. We are directing the secretary to do it.

3 Senator Baker. In effect you are directing the secretary
4 to do it in a way that pleases the court. The same way that the
5 Secretary for HEW now permits plans for school desegregation.
6 If the school like it, fine. If they dont they send it back
7 and say do another one.

8 Senator Muskie. I find it hard to believe that the choice
9 is a torturous cross reference to a procedure that is related
10 to court relief or court dictation.

11 It seems to me that it is possible once we have started
12 this procedure to define the language to say that the court
13 having made the decision to grant the extension or not to
14 grant it -- in either case you are going to have to change
15 the implementation plan -- to take the next step and say to the
16 Secretary, now you have my decision on extension and you go
17 ahead and undertake the administerial act necessary to adapt
18 the implementation plan to this decision. All we are asking
19 is we include it here, otherwise there is a gap.

20 Senator Baker. Id there anybody else concerned about this
21 besides me?

22 (Off the record.)

23 Senator Muskie. May I suggest this technique? Drop (C)
24 and add a parenthesis (6). This may not be the ideal language?
25 In parenthesis (6) say that "the Secretary shall have the

1 authority to modify the implementation plan in accordance with
2 the decision of the court."

3 Senator Baker. No, sir, I would not accept that either.

4 Senator Muskie. I am not saying the details of the plan
5 shall be in accordance with the decision of the court. What I
6 am saying is that in the decision to deny extension or extend
7 extension the Secretary shall then have the authority to
8 modify the planning without going through the 19th month
9 procedure that is set up in the other section of the bill.

10 Senator Baker. That is great. That is what I would like
11 to do. I would like to see the secretary have the authority
12 to change the plan if the judge grants the one year extension.

13 Senator Muskie. Or if he doesn't this is going to have to
14 be changed.

15 Senator Baker. But without the court having any say so in
16 what the secretary does in this respect.

17 Senator Muskie. Is everyone in agreement on that point?
18 If they are let us direct the staff to develop that language.

19 Senator Cooper. As a practical matter if the court
20 found that an extension should be granted he is finding that
21 the plan is just too tough for that district. How are you going
22 to modify the plan? Are you going to reduce the standard so
23 that it is possible to meet it?

24 Senator Baker. It is not really saying that, Senator. I
25 believe if he is granted a year's extension the major burden

1 of his decision to extend is that we tried hard and diligently
2 and that in spite of those efforts we did not develop the
3 means and technology to do it, therefore we ought to have another
4 year to try. I think that is the lay interpretation of the
5 basis for justifying extension. In effect he is not saying
6 that the plan was too tough to begin with. He is just saying
7 we didn't come along as fast as we could in developing techniques
8 to do it. That may be another way of saying the same thing
9 but that is similar to --

10 Senator Boggs. And they may get renewal of additional
11 one year periods until they get the technology working.

12 Senator Beker. At the end of each year the court would
13 have to decide that these conditions have been met.

14 Senator Muskie. That is right.

15 Senator Baker. And under the language that Senator
16 Muskie and I agreed to that the court could not tell them
17 what they had to do under that one year extension. They can
18 only say we will take another look at it in another year.

19 The Chairman. Does that seem to answer your question,
20 John, or do you still have practical consideration of what might
21 develop?

22 Senator Muskie. May I raise another question? Any
23 implementation plan is subject to judicial review. Here if
24 we change this language as we have agreed to and the secretary
25 modifies the implementation plan without any dictation from the

1 court, then that plan is subject to judicial review. What you
2 have done then is postpone the judicial review of the plan
3 possibly beyond the year extension.

4 In the first place you have to pose this situation. The
5 original plan asked for something that is impossible. So it
6 is a crunchy kind of situation. Since it is and the pressures
7 will build up for this judicial relief, then any plan issued
8 by the secretary applies to a similar decision. The situation
9 is still tough.

10 So, the pressure to prolong the judicial process is going
11 to be great, as great as it was to resort to it in the first
12 instance. If that is the case should we not consider whether
13 or not we shorten the judicial process in some way. I'm not
14 suggesting that we do it in the way that it is in the
15 committee print but in some way so that we can minimize the
16 delay in the event there is a likelihood of appeal from the
17 new implementation plan of the secretary.

18 Senator Baker. That is a good point.

19 Mr. Billings. Barry points out that the only critical
20 area of modification of the plan relative to the year extension
21 would be that portion relative to schedules and timetables of
22 compliance. This is really what you are extending on the pollu-
23 ter, is that deadline against which he is operating individually.
24 That is what is enforceable. That would have to be extended
25 by the court or secretary if there is an extension of time.

1 You would not really need to go as far as modifying
2 the entire implementation plan but just those enforceable
3 schedules and timetable of compliance.

4 Senator Muskie. I will pose this situation. All that
5 this act provides is a one year extension. Suppose an
6 industrial plant whose problem is the subject of this request
7 for relief, for extension, that you give the one year extension
8 and the secretary issues a new plan with a new timetable which
9 presumably stretches out for that additional year the time
10 for compliance by that industry. Suppose the industry takes
11 the position that even that additional year can't be met,
12 it ought to have the right to appeal it. The most he can get
13 under this provision is one year but the industry may think
14 more than a year is justified by the facts.

15 So, you may still want to appeal from that implementation
16 plan notwithstanding the fact it was issued with the one
17 year extension included.

18 Mr. Billings. Wouldn't that appeal take place in the
19 initial three year period however because at the end of
20 that three year period he is under penalties, the potential
21 penalties under the enforcement section. If he wants to be
22 relieved of those he is not going to await to defin the
23 extensions.

24 Senator Muskie. You are posing the situation where this
25 request for relief was not made at all, it was made earlier.

1 If you post the fact that you build up to this request for
2 relief then obviously there is a problem and the problem would
3 relate to timetables for compliance.

4 May I ask the rest of the committee how you feel if I
5 suggest to the staff that we do not only what we have already
6 asked them to do but apply themselves to the possibility of pro-
7 viding additional judicial relief in this procedure that would
8 enable us to wrap the whole thing up in one procedure, if nec-
9 essary? They may not be able to come up with anything to
10 satisfy us.

11 You may not agree with me that this is enough of a problem
12 to bother with it.

13 Senator Cooper. Put in one section?

14 Senator Muskie. Since the new implementation plan is one
15 which Howard and I have agreed that the secretary ought to
16 shape and not the court, should we not wrap up in this section
17 whatever judicial review we contemplate may be sought with
18 respect to that new implementation plan.

19 Senator Boggs. The question in my mind is whether or not
20 you need a judicial review because if they get the year's
21 extension and the modified implementation plan by the secretary
22 and if they act in good faith and they are not going to be
23 able to meet the deadline within the year they can petition
24 again for a year under the language on page 45.

25 Senator Baker. This is a good point. I think I am losing

1 sight of the fact that what we are really talking about is a
2 narrow range of relief, just the extension of time difference.
3 It may be that we are making a mountain out of a mole hill.

4 Senator Muskie. Maybe we are building too complicated a
5 structure. All right, let us limit it to this new subparagraph
6 (6).

7 Senator Baker. That is a good point.

8 Senator Muskie. Does that finish the questions with
9 respect to this section? Does Tom have another one?

10 Senator Eagleton. Yes, I do, Mr. Chairman. The next
11 paragraph, subsection (f) -- I am sorry to keep raising the
12 questions I guess. I have read some of these provisions
13 before but I don't recall reading this before. This permits,
14 as I read it in this direct language another 18 months delay and
15 if I computed the time schedule right, if you add in this
16 18 and sub (f) from the time you start on this proposal until
17 the time you finish it is 71 months.

18 Senator Muskie. These relate to the goals, not the
19 standards. These are these longer term goals.

20 Mr. Billings. Using the full capability of the states it
21 would be very difficult to get an effective implementation of
22 the goal. We are saying this goal may not be achieved for
23 30 years, go ahead and take sufficient time for a good fix
24 on what you want to do.

25 Mr. Royce. In the previous session we had goals and

1 standards being enunciated at the same time.

2 Senator Muskie. Okay.

3 The Chairman. Does that clarify it?

4 Senator Eagleton. Yes.

5 The Chairman. Just for our thinking now as to timing --

6 Senator Muskie. Have we finished this?

7 The Chairman. Yes, I understand so. What is your schedule
8 Ed, and others for the remainder of the afternoon? I have
9 one or two matters that I am trying to adjust. I thought this
10 would be a point at which we perhaps should discuss the
11 situation.

12 Senator Muskie. I have a telephone call. I delayed
13 my departure so that if others were available we could spend
14 more time this afternoon. That is wholly up to your own
15 convenience. I just thought I had a responsibility to stay
16 if I could and I can. I can be here until at least 5:00.
17 I will be delighted to take that time.

18 The Chairman. We will continue until 5:00.

19 Senator Muskie. I suggested last time that after going
20 through these things that were sort of referred up to the full
21 committee, and we have covered those now, that we then turn to
22 specific questions that members may have about any other
23 portion of the bill rather than go through it page by page
24 because we have done that in the subcommittee. So if we could
25 start that process, get to any question that any member of the

1 committee would like to get to, then when we have all those
2 questions dealt with, we can turn to the automobiles.

3 The Chairman. Let us take a recess for ten minutes.

4 (Short recess.)

5 Senator Muskie. Mr. Chairman, I wonder if we might now ask
6 members whether they have questions about other portions of the
7 bill that we can get to at this time as the next order of
8 business?

9 Senator Boggs. I will say, Mr. Chairman, that I did have
10 some recommendations from the air pollution authorities in my
11 state. I sent a draft over and I have submitted these to the
12 staff. As I understand from Leon, they were not anything
13 but technical and they thought they were pretty good and you
14 have incorporated them for the most part. Is that right,
15 Leon.

16 Mr. Billings. Right. I point to one that is a policy
17 point but a valid policy point appearing on page 37, section
18 117. Under the requirement, line 21, "in the case of a violation
19 of any emission requirement, emission standards or standards
20 of performance, such time shall not exceed 72 hours."

21 As a matter of practical fact in case, for example, of a
22 steel mill, it takes more than 72 hours to close down a plant
23 without destroying its operations. So, staff is recommending
24 on line 20 where it says "he shall promptly issue an order in
25 writing to such person requiring such person to initiate an

1 abatement of such violation as soon as possible and within the
2 time prescribed therein" and then put corresponding conforming
3 language in here on line 23 that "such action shall be initiated
4 within 72 hours," so that you have a showing of action being
5 taken within 72 hours but he does not have to complete the
6 abatement of the violation.

7 Senator Boggs. I appreciate your taking those points into
8 consideration. I believe they are helpful.

9 Mr. Billings. I believe this is what was intended. In
10 some cases it may take longer than that to change.

11 Senator Boggs. On page 28 the same thing applies?

12 Mr. Billings. Yes, sir, on page 28, line 7. "If an
13 owner or operator of a certified new source does not initiate
14 action within 72 hours as provided."

15 Senator Boggs. That is good.

16 Mr. Billings. The only other change that Senator Boggs
17 is referring to, in the question of setting up a procedure
18 for the states to certify compliance and with the various kinds
19 of emission standards that the draft language says that if
20 the secretary finds the state procedure is adequate to
21 implement the purposes of this section he may delegate
22 enforcement.

23 If the secretary finds the state procedure is adequate
24 that he shall delegate enforcement -- the staff suggested a
25 change, it still has flexibility --this is page 32, lines 21

1 to 24, "if the secretary makes a finding that is discretionary
2 then he should be required to delegate the enforcement
3 authority."

4 Senator Muskie. Are there any other questions by members
5 of the committee?

6 The Chairman. Yes. Ed and gentlemen, overlapping here in
7 a sense what Caleb has been concerned with, I had represen-
8 tations made to me which were reduced to writing so that they
9 might be carefully considered which have to do with new
10 source standards of performance. Dick, as I understand it,
11 you and others have given attention to these matters. Would
12 you comment please.

13 Mr. Royce. Yes, sir. I think all members of the
14 committee have received the same information from the same
15 source. Regarding the new standards, the agency is not making
16 use of the technical advisory committees that were established
17 under the 1967 act as much as they should. When they do
18 make use of it they do not get the information out to the
19 states and the local agencies who are going to have to do the
20 backup. Page 23 (b) (2), "the Secretary shall publish,"
21 et cetera, "after consultation with the appropriate technical
22 advisory committees."

23 As you know under the act --

24 The Chairman. Remind me how we set those up and who
25 they are.

1 Mr. Royce. In the major industries there have been
2 established technical advisory committees to work with --
3 The Chairman. The steel industry?

4 Mr. Royce. The steel industry advisory committee,
5 asbestos, aluminum. The language of the act in PL 90-148
6 in order to obtain assistance in the development and implement-
7 ation of the purposes of this Act including air quality
8 criteria, recommended control techniques, standards, research,
9 and development, and to encourage the continued efforts on the
10 part of industry to improve air quality and to develop
11 economically feasible methods for the control and abatement
12 of air pollution, the Secretary shall from time to time
13 establish advisory committees. Committee members shall
14 include, but not be limited to, persons who are knowledgeable
15 concerning air quality from the standpoint of health, welfare,
16 economics, or technology."

17 Those committees have been established for almost all of
18 the industries. It would be in this area that the committee
19 I think should direct the secretary and in the act, et cetera,
20 to consult with the establishment of standards.

21 The Chairman. Ed, what is your feeling about this
22 situation?

23 Senator Muskie. Where is it suggested that this go in.

24 Mr. Royce. Page 23, line 19. "The Secretary shall
25 consult with the appropriate advisory committee and shall

publish after consultation with the appropriate advisory committees."

The Chairman. What would seem to me, Ed, to be a valid reason for this inclusion would be that we actually carry forward something that we have done in prior legislation but we rather nail down the fact that we want the information that is technical in nature to really be used. That is my practical thinking about it.

Senator Muskie. I can just see a possibility. You know public attitudes have changed since that provision was put in. Here the only consultative group that this would give an opportunity to make an input is an industry group. I think that that might be the subject of considerable criticism. These are standards of performance by new sources, new plants. The only input from the outside that we will be providing is an industry input.

The Chairman. I would like to make a comment on that point, not to draw argument. As I see it, it is the intent to draw a very stringent line on industry, business and commerce. I would think that these companies that form these industries and businesses, commercial enterprises, that if you are going to direct legislation at them in which I have an interest and which I am in favor of our doing, a realistic effective job, certainly the very industries you are going to control or regulate, we would not want them to not

1 have as I see it the opportunity of having the so-called
2 input from these people.

3 Senator Muskie. The question is not whether they make an
4 input but whether they have a special opportunity denied
5 everybody else. I would assume that the formation of standards,
6 unless we provide hearings for every Tom, Dick and Harry, that
7 the Secretary would turn to many sources of information before
8 he publishes emissions. More than that, I take it, and I
9 will ask Tom Jorling on this, that when these standards
10 have been listed in the register there are procedures for
11 those affected by the standards to appeal.

12 Mr. Jorling. Yes.

13 Senator Muskie. So they have an input after that. Of
14 course industry ought to make an input. I think they would.

15 The Chairman. They are going to have to pay for it.

16 Senator Muskie. They will pass it on to their customers.

17 The Chairman. That is true.

18 That does not cause me to withdraw my earlier statement.
19 I think we have to think in terms of that as certainly a
20 factor.

21 Senator Muskie. It may be, Jennings, that I am overly
22 sensitive. One of the points that the Nader report hit us hard
23 on is the allegation that we met privately with representatives
24 of industry after the public hearings to discuss the
25 legislation. The implication was that this was the only group

1 that we listened to. I see no damn reason why we should
2 deliberately subject ourselves to that criticism in this
3 legislation. We are not talking about whether industry
4 makes an input or does not make an input. I assume that without
5 any such provision industry is going to make many inputs into
6 the setting of standards, that the secretary is going to
7 solicit from industry information as to what is technologically
8 feasible.

9 I don't know how else the secretary could make a finding.

10 What we are talking about is not that there is going to
11 be an industry input, there is going to be an environmental
12 inquiry without any such provision, formal hearings,
13 committees and so on. What I am raising a question about,
14 and I think it is a legitimate question since this committee
15 as well as I was subject to criticism by the Nader report
16 on this point, we just say an industry is going to have a formal
17 opportunity to make an input, and no mention of any other
18 group.

19 Senator Eagleton. Mr. Chairman, may I mention a position,
20 not compromise but it will encompass I think what both you and
21 Senator Randolph are driving at. This is not precise language
22 but something to this effect, insert "after consulting with the
23 advisory groups, and citizens or groups of citizens qualified
24 by reason of experience and interest." He can consult, directed
25 to consult with the advisory groups, technical advisory

1 groups if that be their official name, and not just consulting
2 with them, it is not deemed that he is only hearing from
3 them, and citizens or groups of citizens qualified by reasons
4 of experience and interest to advise, which could be again
5 the Brookings Institution if they had a special think thank
6 on air pollution or what have you. Incorporate what Senator
7 Randolph is saying, have him consult with the technical
8 advisory groups and also broaden it to for others to be heard
9 or consulted.

10 Senator Cooper. I understand your viewpoint, Senator
11 Muskie, of being charged with proceeding with private
12 consultation. I think as long as you write it out in the act,
13 itself, it is much better and I would say I would adopt
14 Senator Eagleton's suggestion.

15 Senator Muskie. I have no objection to that. I want to
16 be sure that it is a broadly based opportunity.

17 The Chairman. Ed, as I read the language in Public
18 Law 90-148 we did say that "committee members shall include
19 but not be limited to persons who are knowledgeable concerning
20 air quality from the standpoint of health, welfare, economics
21 or technology."

22 I haven't looked upon it as favoritism really or the
23 barring of those who might not be indentified directly with
24 industry or business. Perhaps I may not quite understand.
25 Do you have any comment, Dick?

1 Mr. Royce. May I, Mr. Chairman.

2 The reason that it is considered important grows out of
3 the failure of the agency to use the outside expertise which
4 is available. Now in the steel industry alone they published
5 a study resulting from the steel advisory committee at a cost
6 of about \$350,000. The material is not being distributed to
7 the states or local air pollution agencies unless it is
8 requested. They are all established away in North Carolina.

9 The advisory committees are the people composed partly of
10 industry people who know the technological problems and tech-
11 nological capabilities before them, much more so in some
12 industries than members of the agency.

13 The Chairman. Probably the agencies are short on
14 personnel.

15 Mr. Royce. I know in one instance there was a NAPCA
16 report stating that fluorides were a problem in the steel
17 industry. This was based on the assumption of the consumption
18 of fluorspar in the steel making process. Fluorides are not
19 a problem in the steel industry. They are a problem in phosphate
20 and the aluminum industry but not the steel industry.

21 Senator Fagleton. The only point I may make in commentary
22 on that, I don't think that we should assume that the sole
23 body of knowledgeable expertise is confined to the 22 members
24 of the steel advisory group, whoever they may be. They may
25 change. Guys die and people are appointed. I don't know if

1 there are 22 on there, maybe it is 12. Let us assume there are
2 22 men on the steel advisory group. If you put in that he just
3 consults with them that assumes something that can't be assumed,
4 that only those 22 guys have the knowledge. Why have the tech-
5 nical committee if you just throw the stuff in the wastebasket.

6 Consult with them but also mandate them to also consult
7 with other knowledgeable qualified people who by their experience
8 and interest, et cetera.

9 Mr. Royce. The National Academy of Sciences and National
10 Academy of Engineers both have quite a bit to contribute in
11 this area.

12 The Chairman. I understand we would be helping and then
13 he would establish federal standards of performance.

14 Senator Muskie. Mr. Chairman, I have no objection to the
15 language suggested by Senator Eagleton.

16 The Chairman. Let us check the language again.

17 Senator Eagleton. It is very rough. We can give it to
18 the staff and let them polish it up.

19 I will read what I have but it is very rough.

20 The Chairman. I remember what you read but I also had
21 the understanding you did not feel it was the finalization
22 of your thinking.

23 Senator Eagleton. No, it is very rough. I have no
24 pride of authorship.

25 The Chairman. Let us ask.

1 Senator Gurney. On this very same section here Ed
2 raised the point when he said of course in the final analysis
3 what pollution controls are put on will be passed on
4 economically to the customers, I think that is true. In other
5 words, there is an economic factor. Why don't we mention
6 that? Is there anything wrong with mentioning the fact that they
7 ought to take into consideration the economic factor as well
8 as the available control technology, process and operating
9 methods?

10 It is a very large factor that they will have to take
11 into consideration. The reason why I raise the point is that
12 it is conceivable that the enthusiasm of perhaps somebody in
13 charge of this at HEW might get away with them and their
14 attention may be focused too much on the available control
15 technology and forget about the economic consequences.

16 I wonder if we should not mention the economic factor.

17 Senator Muskie. Well, it is conceivable of course,
18 I don't know enough across the board about the technology
19 that is available, but if you use the words "economically
20 feasible" in some instances you may lay the basis for
21 including the use of technology that is available without a
22 choice.

23 In other words, without the choice of something cheaper.
24 So, what you may get is a decision not to require any
25 technology because in somebody's judgment the technology

1 available is not economically feasible.

2 Senator Gurney. I would agree on the word "feasible."
3 I don't think that would be wise. I was thinking of economic
4 factors. I think economically feasible is a red herring that
5 could be used to sabotage the act. But economic factors,
6 I don't see how that could --

7 Senator Muskie. It is still subjective text.

8 Senator Eagleton. What page are you referring to?

9 Senator Gurney. Top of page 24. "Such standards shall be
10 based on the greatest degree of emission control which the
11 Secretary" -- and then we go to method or other alternatives.
12 All I pointed out was that the economic factor is a big one.
13 It will be present in the decision, no question about it,
14 it will have to be. I say why don't we mention it because I
15 think that the attention of the people in charge of this act
16 down at HEW ought to be directed to that as well as the other
17 thing.

18 I suppose you could develop a device that took away all
19 pollution but --

20 Senator Muskie. You know we are talking about new plants.
21 You know, when it comes to existing plants we hear this argument
22 that, damn it, you have a plant in existence and it is tough,
23 it was built in a time when these standards weren't required,
24 the public was not concerned about pollution, so it is
25 unfair to insist upon too much from them. Now we are talking

1 about the new plants of tomorrow. It is a very familiar
2 prediction that between now and the turn of the century we
3 are going to have to maybe double the industrial capacity of this
4 country. That means that we are going to build twice as many
5 plants as we built up to this time. That means we are faced
6 here in the next quarter of a century, in the next 30 years,
7 with a tremendous pollution problem unless we are very tough.

8 Now what may seem economically prohibitive today may with
9 the benefit of hindsight ten years from now look like a very
10 cheap answer that we should have insisted upon at that time
11 if we had only known.

12 So that troubles me. What may be economically feasible
13 now by the current standards of industrial economics and
14 their business is to make profits, if you use that kind of
15 standard you may exclude a lot of technology that ten years
16 from now you may regret you did not require especially since
17 it is new plants you are talking about.

18 Now I don't really want to insist upon something that
19 is actually economically prohibitive. I don't even know if you
20 can write that kind of thing in. But if technology is available
21 and to be available I would think it would have to be available
22 on a scale to put it within reach of economic viability and
23 requirements of growing industry, if it is that available
24 then it must have demonstrated its economic viability to some
25 extent or it would not have been manufactured to that extent.

1 No industry is going to invest capital to develop
2 hardware that they cannot sell. So if they have developed
3 it to the point that it is available to an industry then it
4 seems to me that already economic factors have been taken into
5 account sufficiently for our purposes. For us to add an
6 economic test it seems to me raises another excuse for not
7 requiring its incorporation in new industry.

8 It seems to me that availability really incorporates
9 enough of the economic factor and we could spell that out in
10 the report to indicate that we are not asking for the impossible.
11 Availability incorporates enough of it to serve our purposes.
12 I may be wrong. It is a perfectly proper question and one
13 I think that we ought to understand fully before we go to the
14 floor so that the committee members are not taken by
15 surprise.

16 Senator Gurney. Let me ask this question. If you put in
17 the language, "taking into consideration economic factors,"
18 just throwing that language out, after all the secretary makes
19 the determine, all we are focusing his attention on is these
20 things that he ought to take into consideration when he makes
21 that determine. Now my question is, even if that language
22 were in there how could an industry attack this bill simply
23 on taking into consideration economic factors. I don't see
24 really how he could.

25 Senator Muskie. Could not an industry argue that since

1 this piece of hardware costs as much as the rest of the plant
2 put together it is not really available in any realistic
3 sense?

4 Senator Gurney. He would argue that any way I think.
5 If he came before the court under the court relief section
6 for relief he could argue that even without the language
7 that I suggest. What I am saying is that I do not see how
8 he could shoot this act down under simply that language
9 which would say "taking into consideration economic factors."
10 I don't see how he could shoot the act down. There is nothing
11 in there that would permit him to. The secretary has the
12 right to determine under the language.

13 Senator Muskie. The difficulty is finding language
14 to indicate that what you are talking about is not the usual
15 economic feasibility taking into account the economics of a
16 particular industry but what you are talking about is something
17 that is less than prohibitive. That is what I have in mind.

18 I think if it is not prohibitive that you ought to require
19 people to stretch themselves considerably to incorporate avail-
20 able technology.

21 I think if you just put in the phrase "economic factors"
22 that you are going to in effect mean technological feasibility
23 by conventional standards. I have in mind something more
24 stringent than that.

25 The Chairman. I have the feeling that the economic

1 considerations are very important in the decision which is
2 arrived at in the case. I also understand that we must think
3 in terms of that as one part of it as we look for the health
4 of the people. I think it is a matter of extreme importance
5 but I am not sure that we should isolate it just unto itself.

6 I am just thinking. Certainly in so far as what I have
7 recommended I believe that is absolutely necessary. I think
8 that is important. I think it is fair.

9 I am not just sure of further implementation of that
10 thought. Dick, do you have any comment?

11 Mr. Royce. I would like to comment, Mr. Chairman.

12 I have spoken with a number of people in industry with
13 reference to this specific language, Senator Gurney. Their
14 concern is not so much with economic considerations as with
15 a clarification of what we mean by available control technology
16 in terms that Senator Muskie has referred to as commercially
17 available, so to speak.

18 Now with specific reference to current demonstration or
19 developmental efforts in sulfur oxide removal, the limestone
20 injection system of sulfur oxides now under demonstration is
21 being applied on a couple of electrical utilities. They are
22 entering into contracts with NAPCA now. These are on a
23 demonstration basis of federal and private funding. The
24 concern of the utilities is not so much with the economics of
25 it as with whether or not it works. They have to have a 12

1 month guarantee that the system will be operative for 12
2 months before they will enter into it. The developers,
3 Westinghouse is one, and the other people, have to move their
4 original 30 or 90 day warranty up to a year before the utility
5 will buy it.

6 This is their main concern rather than with the economic
7 aspect, et cetera. This SO2 process I just referred to would
8 I assume under this language not be considered available
9 control technology until it has been demonstrated
10 to work.

11 Maybe two years hence it would fall under this kind of
12 language but as of now it would not.

13 The Chairman. Ed, can we think further about your
14 concern here?

15 Senator Gurney. I wish we could. I did want to reply
16 specifically that the people who have contacted me about the
17 economic factor are very concerned about it and several
18 witnesses testified before the committee on that very thing.

19 I think probably industry is as much concerned about
20 that as they are about anything else. My suggestion is in no
21 way to put a roadblock on the bill. I am not suggesting that.
22 I don't want that. I want pretty much what Ed Muskie wants.
23 I am also impressed with the fact that sometimes the bureau-
24 crats get over eager, their attention is directed all one way
25 toward technological solutions and they forget about the economic

1 solutions. In the act if we direct their attention also to
2 that, because it has to be part of the decision, a large part
3 of it, they can't divorce the standards of what they will
4 require from the economic factors involved.

5 The Chairman. I imagine though, Ed, not drawing a point,
6 that testimony was given but I don't think the language we
7 were then thinking of is the language that we are thinking
8 of now.

9 Leon, am I correct on that.

10 Mr. Billings. Mr. Chairman, that was prior to the
11 development of the concept of available technology. As Mr.
12 Royce just indicated, we had some extensive discussions with the
13 administration on how they would apply the concept of new
14 source of performance standards. What they wanted to have
15 is the flexibility to push technology while not pushing industry
16 into a position of having to apply tests that were not achievable.

17 The concept would be in essence if a phosphate plant in
18 Polk County had achieve a high degree of chlorene control
19 through the development of wet scrubbers, then that would be the
20 test on which the standards woule be based, that is the greatest
21 degree of technology that is available. It is applied on the
22 plant, it is available, it is better than anything else and
23 other new plants would at least have to meet that standard.

24 If other new plants in that development found that they
25 could even go further the standard would be revised as that

1 technology improved. This is the keystone, that word "avail-
2 able."

3 Senator Gurney. I certainly don't quarrel with that
4 concept. It is possible that the economic factor could be
5 spelled to get your idea in there that industry won't get off
6 the hook --

7 Senator Muskie. May I suggest that we ask the staff to
8 work on language which we might include in the report for us
9 to look at. We don't have to buy a pig in a poke. Let us
10 ask them to work out that language and we will look at it and
11 see if that meets the question that has been raised. It is
12 a perfectly appropriate question.

13 I am glad it has been raised.

14 Senator Cooper. The thought comes to my mind, do you
15 think this is going to result in the concentration of economic
16 power in fewer and fewer giants?

17 Senator Muskie. That is a possibility.

18 The Chairman. What giants?

19 Senator Cooper. Automobiles.

20 Senator Muskie. That is right, John.

21 The Chairman. Is it our understanding, gentlemen, that
22 we meet on Monday at 2:30? Is this the understanding?
23 Is that agreeable. I thank you all.

24 Senator Eagleton. Could I raise one tiny point since
25 we are finished on that one section? Should not the last line

1 on page 23 where it says "the latest available control techno-
2 logy," should it not be "the most effective." The latest
3 is not necessarily the most effective. Somebody might have
4 a later system, newer system, but the older one might be more
5 effective than the latest.

6 The Chairman. We discussed that problem in another
7 relationship. I am in accord with you. It is not always the
8 latest that is the best. You can even say "the latest
9 and most effective.

10 Senator Muskie. I think the ide of effectiveness should
11 also be included in the report language that we are talking
12 about.

13 The Chairman. Thank you very much then. We will come
14 back at 2:30 on Monday.

15 (Whereupon, at 5:05 p.m. the committee was adjourned,
16 to reconvene on Monday, August 31, 1970, at 2:30 p.m.)
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